

1 UNITED STATES OF AMERICA
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF CALIFORNIA

4 - - -
5 HONORABLE JOHN A. HOUSTON
6 UNITED STATES DISTRICT JUDGE PRESIDING
7 - - -

8 UNITED STATES OF AMERICA,)
9)
10 PLAINTIFF,)
11)
12 VS.) NO. 10CR1805JAH
13)
14 DANIEL EDWARD CHOVAN,)
15)
16)
17 DEFENDANT.)
18 _____)

19 **SENTENCING**

20 REPORTER'S TRANSCRIPT OF PROCEEDINGS
21 **MARCH 21, 2011**
22 SAN DIEGO, CALIFORNIA

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1 APPEARANCES OF COUNSEL:

2 ON BEHALF OF PLAINTIFF:

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7 ON BEHALF OF DEFENDANT:

8 FEDERAL DEFENDERS OF SAN DIEGO
9 BY: MR. JOSHUA JONES, ESQ.
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1 SAN DIEGO, CALIFORNIA; MONDAY, MARCH 21, 2011

2 - - -

3 (COURT IN SESSION AT 9:00 A.M.)

4 MADAM CLERK: 10CR1805, UNITED STATES OF AMERICA
5 VERSUS DANIEL EDWARD CHOVAN.

6 MR. JONES: GOOD MORNING, YOUR HONOR. JOSHUA
7 JONES, FEDERAL DEFENDERS, ON BEHALF OF MR. CHOVAN. THANK YOU
8 FOR THE COURT ACCOMMODATING ME IN MY FLIGHT DELAY.

9 THE COURT: THAT'S FINE.

10 MS. HAN: GOOD MORNING, YOUR HONOR. CAROLINE HAN
11 ON BEHALF OF THE UNITED STATES.

12 THE COURT: GOOD MORNING. MR. CHOVAN, HOW ARE YOU?

13 THE DEFENDANT: FINE, THANK YOU.

14 THE COURT: WE ARE HERE IN THIS MATTER FOR
15 SENTENCING. I HAVE REVIEWED THE PRE-SENTENCE REPORT, YOUR
16 SENTENCING MEMORANDUM, YOUR REQUEST FOR BAIL PENDING APPEAL,
17 THE GOVERNMENT'S OPPOSITION TO BAIL PENDING APPEAL, THE
18 GOVERNMENT'S SENTENCING MEMORANDUM AND THE GOVERNMENT'S
19 SENTENCING CHART.

20 BEFORE WE BEGIN, TO THE GOVERNMENT, IS THERE ANY
21 REASON WHY EXHIBIT 3 TO YOUR MEMORANDUM SHOULD NOT BE UNDER
22 SEAL?

23 MS. HAN: NO, YOUR HONOR, I DO NOT BELIEVE SO.
24 THERE IS NO REASON FOR THAT.

25 THE COURT: ALL RIGHT. THE COURT ORDERS THAT

1 EXHIBIT NO. 3 TO THE GOVERNMENT'S SENTENCING MEMORANDUM
2 SHOULD BE FILED UNDER SEAL.

3 MR. JONES: THANKS, YOUR HONOR.

4 THE COURT: COUNSEL, I WOULD LIKE TO HEAR FROM YOU.

5 MR. JONES: YES, YOUR HONOR. I THINK IT'S FAIR TO
6 SAY --

7 THE COURT: EXCUSE ME. WE START --

8 MR. JONES: THIS IS SOMEWHAT OF AN UNUSUAL CASE.
9 IF YOU JUST LOOK AT THE BEAR FACTS OF THE CASE, YOU WOULD SAY
10 THAT THIS IS NOT A VERY AGGRAVATED MISDEMEANOR IN POSSESSION
11 OFFENSE. MR. CHOVAN'S MISDEMEANOR, AS THE COURT IS WELL
12 AWARE, IS 15 YEARS OLD AT THIS POINT. THE THINGS THAT THE
13 GOVERNMENT POINTS TO TO MAKE IT MORE AGGRAVATED ARE SPECIFIC
14 CIRCUMSTANCES WITH REGARD TO MR. CHOVAN. THE FACT THAT THE
15 AUTHORITIES WERE ALERTED TO HIS PRESENCE BY A CALL FROM HIS
16 WIFE, WHICH OBVIOUSLY RELATES BACK, EVEN THOUGH THE PREVIOUS
17 CONVICTION IS DATED, WE CAN UNDERSTAND WHY THAT MIGHT GIVE
18 THE GOVERNMENT SOME CONCERN.

19 HOWEVER, I THINK THAT MR. CHOVAN, IN THIS INSTANCE,
20 THERE IS NO INDICATION WHATSOEVER THAT HE HAS EVER USED A
21 FIREARM IN AN INAPPROPRIATE MANNER, OR EVEN THAT HE HAS USED
22 ONE OUTSIDE THE PREMISES OF HIS OWN RESIDENCE.

23 THE FIREARMS THAT MR. CHOVAN HAD HE RECEIVED FROM
24 HIS FATHER -- OR HIS STEPFATHER, WHO'S PRESENT HERE TODAY,
25 ALONG WITH MR. CHOVAN'S MOTHER, HIS GIRLFRIEND, AND HIS

1 GIRLFRIEND'S MOTHER, AS WELL, ARE ALL HERE TO SHOW SUPPORT.
2 HE RECEIVED THE FIREARMS AFTER THE MOTHER DECIDED SHE DIDN'T
3 WANT THE FIREARMS IN HER HOME ANY MORE THAT
4 MR. CHOVAN TOOK THEM IN.

5 AS THE COURT WAS AWARE, THERE WAS ORIGINALLY A
6 CHARGE IN THIS CASE PREVIOUSLY THAT HE HAD USED -- OR MADE A
7 FALSE STATEMENT ON AN APPLICATION TO PURCHASE THE FIREARM.
8 AND WE JUST WANTED TO CLARIFY FOR THE COURT THAT AS PART OF
9 THE DISPOSITION, THE COURT DID DISMISS THAT CHARGE. BUT WE
10 MAINTAIN THAT MR. CHOVAN WAS FACTUALLY INNOCENT OF THAT
11 OFFENSE. BECAUSE MR. CHOVAN WAS NOT AWARE -- HE WAS NOT
12 INTENTIONALLY TRYING TO DECEIVE THE PEOPLE AT THE SHOP. IF
13 YOU LOOK AT THE FORM THAT HE FILLED OUT, AND IN AN ATTEMPT TO
14 PURCHASE IT, WHEN ASKED IF YOU HAVE BEEN CONVICTED OF A
15 MISDEMEANOR CRIME OF DOMESTIC VIOLENCE, HE CHECKED YES, AND
16 THEN HE SCRATCHES IT OUT ON THE FORM AND THEN CHECKED NO.
17 WHICH ARE NOT THE ACTIONS OF A PERSON WHO'S GOING IN THERE
18 DELIBERATELY TRYING TO DECEIVE SOMEONE.

19 AS THE COURT IS AWARE, THE LAW REGARDING WHETHER OR
20 NOT A PERSON IN MR. CHOVAN'S POSITION CAN POSSESS A FIREARM
21 ARE SOMEWHAT COMPLICATED. WHEN HE WAS CONVICTED OF HIS
22 MISDEMEANOR 15 YEARS AGO, HE RECEIVED A FORM THAT TOLD HIM
23 THAT HE WAS BARRED FROM OWNING A FIREARM FOR TEN YEARS. AT
24 THAT POINT IN TIME, THAT WAS TRUE. UNDER CALIFORNIA STATE
25 LAW HE WAS ONLY BARRED FROM POSSESSING A FIREARM FOR TEN

1 YEARS. AT THAT TIME, FEDERAL LAW HAD NOT YET BEEN AMENDED TO
2 MAKE IT ILLEGAL FOR PEOPLE WHO HAD BEEN CONVICTED OF A
3 MISDEMEANOR CRIME OF DOMESTIC VIOLENCE TO OWN A FIREARM.

4 WE ACKNOWLEDGE THAT THE CURRENT STATE OF THE LAW IS
5 THAT MR. CHOVAN CANNOT POSSESS A FIREARM, NOT WITHSTANDING
6 THE MOTIONS AND OTHER LITIGATION REGARDING HELLER AND THE
7 SECOND AMENDMENT. WE DONT' DISPUTE THAT LEGALLY, BUT I THINK
8 IT'S A FACTUAL MATTER FOR MR. CHOVAN. HE REALLY WAS NOT --
9 IT MAY HAVE BEEN A LITTLE BIT OF WISHFUL THINKING ON HIS
10 POINT AFTER HE RECEIVED THE DENIAL OF HIS ATTEMPT TO PURCHASE
11 THE FIREARM. BUT AT THE TIME HE WAS ATTEMPTING TO PURCHASE
12 THAT FIREARM, I THINK HE HONESTLY BELIEVED THAT HE COULD
13 POSSESS A FIREARM AFTER TEN YEARS, AND THAT WAS AFTER HE
14 RECEIVED THE FIREARMS FROM HIS FATHER AS WELL. I THINK, IN
15 THE AREA WHERE MR. CHOVAN GREW UP, AND SPEAKING WITH HIS
16 STEPFATHER, MANY PEOPLE IN THAT AREA HAVE THE KINDS OF
17 FIREARMS THAT MR. CHOVAN HAD, SHOT GUNS AND RIFLES AND THINGS
18 LIKE THAT. BECAUSE THERE IS WILDLIFE OUT THERE AND THEY DO
19 USE THE FIREARMS FOR THOSE PURPOSES.

20 NOW, WE ACKNOWLEDGE, AND MR. CHOVAN ACKNOWLEDGES,
21 AT THE TIME THIS INVESTIGATION WAS GOING ON, AND HE HAD
22 CONNECTIONS TO A VERY UNSAVORY ORGANIZATION, THE NSM
23 ORGANIZATION. HOWEVER, AT THE TIME THAT HE WAS INVESTIGATED,
24 HE WAS PICKED UP BY THE FBI. HE WENT IN. HE SPOKE WITH
25 THEM. HE DEBRIEFED WITH THEM. HE EXPLAINED THAT AS A RESULT

1 OF AN INCIDENT THAT OCCURRED AT ONE OF THEIR GATHERINGS WHERE
2 HIS GIRLFRIEND WAS ASSAULTED, THAT HE HAD CUT MANY OF HIS
3 TIES WITH THOSE PEOPLE.

4 NOW, UNDENIABLY MR. CHOVAN DOES HAVE CONNECTIONS TO
5 PEOPLE IN THAT ORGANIZATION. HE KNOWS THEM. AND I THINK
6 THAT'S BECAUSE OF A LOT OF THINGS THAT HE DID IN HIS YOUTH,
7 AND ALSO AS A RESULT OF WHERE HE GREW UP AND I THINK THAT A
8 LOT OF PEOPLE CAN RELATE TO THAT. THERE IS -- I GREW UP ON
9 THE SOUTH SIDE OF CHICAGO. THERE IS A LOT OF PEOPLE THAT I
10 KNOW THAT MY PARENTS PROBABLY ARE NOT PARTICULARLY PLEASED
11 THEY ARE MY ASSOCIATES, BUT THAT DOESN'T MEAN THAT I'M
12 NECESSARILY INVOLVED WITH THOSE PEOPLE OR GOING TO CONTINUE
13 TO BE INVOLVED WITH THOSE PEOPLE IN A WAY THAT IS
14 INAPPROPRIATE.

15 I THINK MR. CHOVAN, AT THIS POINT IN HIS LIFE, IS
16 IN A SOMEWHAT SIMILAR SITUATION. HE'S ALSO A MAN THAT'S
17 GOING TO HAVE A LOT ON HIS PLATE. AS THE COURT IS AWARE OF
18 THE MENTAL HEALTH ISSUES THAT WERE DISCOVERED, I THINK THAT
19 THIS PROCESS HAS BEEN REALLY IMPORTANT FOR HIM. BECAUSE THIS
20 IS THE FIRST TIME IN HIS LIFE HE HAS EVER BEEN ABLE TO HAVE
21 ACCESS TO COUNSELING. THE COURT IS AWARE OF THE SUICIDE
22 ATTEMPT THAT HAPPENED IN THIS CASE. I THINK THAT THIS
23 PROCESS OF BEING ON SUPERVISION AND HAVING TO ADDRESS THESE
24 CHARGES HAS REALLY GIVEN HIM AN OPPORTUNITY TO REASSESS HIS
25 LIFE AND START TRYING TO PUT THINGS BACK ON THE RIGHT TRACK.

1 I KNOW THE GOVERNMENT IS GOING TO LIKELY MAKE
2 REFERENCE TO THE FACT THIS ALLEGED PRETRIAL RELEASE VIOLATION
3 WAS NOT A VIOLATION. I DON'T HAVE FULL FACTS ON THAT, BUT
4 THE DOCUMENTS THAT I'VE READ ESSENTIALLY AMOUNT TO MR. CHOVAN
5 AND ANOTHER PERSON BEING IN THE SALVATION ARMY STORE, AND
6 THEN CALLING THE POLICE, AND THEN COMING TO THE STORE, AND
7 THEN STILL BEING IN THE STORE AND HAVING MERCHANDISE.

8 NOW, I AM SURE MAYBE THERE ARE OTHER FACTS THAT I'M
9 UNAWARE OF, FOR MOST PEOPLE THAT'S CALLED SHOPPING, IF HE
10 NEVER LEFT THE PREMISES OF THE ESTABLISHMENT, AND IN THIS
11 CASE HIS PRETRIAL RELEASE WAS NEVER REVOKED. AND I DON'T
12 WANT THAT TO BE ABLE TO SHY AWAY FROM ALL OF THE PROGRESS
13 THAT HE HAS MADE AND, I THINK, IN THIS TIME PERIOD. HE HAS
14 BEEN ABLE TO FIND GAINFUL EMPLOYMENT WORKING AS A WELDER
15 AGAIN, AND AS THE COURT IS AWARE FROM THE PRE-SENTENCE
16 REPORT, HE HAS BEEN DOING THAT KIND OF WORK FOR A LONG TIME.

17 OTHER DEVELOPMENTS IN HIS LIFE ALSO PUT MORE
18 RESPONSIBILITY ON HIM. I HAD HIS MOTHER WRITE A BRIEF LETTER
19 THAT SHE BROUGHT TO COURT TODAY. WITH THE COURT'S
20 PERMISSION, I'D LIKE TO READ IT INTO THE RECORD.

21 THE COURT: ALL RIGHT.

22 MR. JONES: "YOUR HONOR, I'M DIANA PUGH, (PHONETIC)
23 DAN CHOVAN'S MOTHER. I'M NOT ONE TO PLEAD AND BEG, BUT I DO
24 ASK THAT YOU READ THIS AND MAYBE USE IT IN YOUR DECISION
25 MAKING. DAN'S DAD, WILLARD PUGH, HAS BEEN DIAGNOSED WITH A

1 VERY AGGRESSIVE FORM OF PROSTATE CANCER. WE DON'T KNOW IF IT
2 HAS SPREAD YET, BUT WE WILL SOON FIND OUT. HE IS SCHEDULED
3 TO BE OPERATED ON TO HAVE HIS PROSTATE REMOVED ON MARCH 30,
4 2011. IF IT HAS SPREAD, THEY WILL DO NO FURTHER SURGERY AT
5 THIS TIME, BUT WILL START HIM ON CHEMO, OR RADIATION OR BOTH.

6 I'M 56 YEARS OLD AND NOT SO YOUNG ANYMORE. I HAVE
7 MY AILING AND BLIND MOTHER LIVING WITH US AND IS TOTALLY
8 DEPENDENT ON ME FOR EVERYTHING. IT SEEMS I HAVE A REALLY
9 HEAVY PLATE TO DEAL WITH. WHILE THAT IS NOT YOUR PROBLEM,
10 I'D ASK FOR YOU TO UNDERSTAND HOW I DEPEND ON DAN TO HELP ME
11 BOTH PHYSICALLY AND MENTALLY. I TRULY DON'T KNOW HOW I'LL DO
12 EVERYTHING I NEED TO DO WITH MY HUSBAND HAVING CANCER AND MY
13 BLIND MOM WITHOUT DAN. I REALLY NEED HIM HERE TO HELP ME OUT
14 OR I DON'T KNOW WHAT WILL HAPPEN.

15 IF THIS SOUNDS A BIT WHINEY, WELL, I GUESS IT IS.
16 AND I DON'T KNOW HOW ELSE TO ASK YOU TO CONSIDER THIS IN YOUR
17 DECISION RE DAN'S SENTENCING. NOT ONLY DO I LOVE HIM DEARLY,
18 BUT I NEED HIM VERY BADLY AT THIS TIME. THANK YOU FOR TAKING
19 THIS INTO CONSIDERATION."

20 SO, EVENTS IN MR. CHOVAN'S LIFE, I THINK, HAVE
21 GIVEN HIM A NEW PERSPECTIVE. AND NORMALLY THIS IS NOT THE
22 MOST SERIOUS CHARGE THAT THE COURT COMES ACROSS SINCE THERE
23 IS NO INDICATION THAT HE WAS DOING ANYTHING ELICIT WITH ANY
24 OF THE FIREARMS, BUT I DO THINK GIVEN THE CIRCUMSTANCES THAT
25 THERE WAS A NEED FOR MR. CHOVAN TO REASSESS THE DIRECTION

1 THAT HIS LIFE WAS GOING, AND I THINK HE HAS DONE THAT IN THIS
2 CASE.

3 OUR RECOMMENDATION IN THIS CASE IS FOR FIVE YEARS
4 OF PROBATION. I THINK THAT WOULD BE AN APPROPRIATE SENTENCE.
5 I THINK THAT WOULD MEET ALL THE PURPOSES OF SENTENCING UNDER
6 3553, AND I THINK THE EXTENDED PERIOD OF SUPERVISION WOULD
7 REALLY BENEFIT MR. CHOVAN. I THINK WHEN WE TAKE INTO ACCOUNT
8 THE AGE OF THE PRIOR CONVICTION IN THIS CASE, THE FACT IT WAS
9 15 YEARS OLD, AND THE STEPS HE HAS MADE SINCE HE HAS BEEN ON
10 PRETRIAL RELEASE, THE COURT CAN REST ASSURED, WITH ADEQUATE
11 SUPERVISION, AND ALSO HE DID SPEND A LITTLE BIT OVER A WEEK
12 IN CUSTODY PREVIOUSLY WHEN HE WAS ARRESTED AND I THINK THAT
13 HAD A SIGNIFICANT AFFECT SINCE HE HAS NEVER SPENT A
14 SIGNIFICANT PERIOD OF TIME IN CUSTODY SINCE THE 120 DAYS ON
15 THE MISDEMEANOR, I THINK THAT FIVE YEARS OF PROBATION IN THIS
16 CASE WOULD BE AN APPROPRIATE SENTENCE. AND WE WILL SUBMIT ON
17 THAT.

18 THE COURT: MA'AM?

19 MS. HAN: YOUR HONOR, I THINK THE FUNDAMENTAL
20 DIFFERENCES BETWEEN THE UNITED STATES' PERSPECTIVE ON THIS
21 CASE AND THE DEFENDANT'S PERSPECTIVE ON THIS CASE IS THAT
22 OVER AND OVER AGAIN WE HAVE HEARD THAT THE OFFENSE IS NOT
23 THAT SERIOUS. AND IT'S ACTUALLY NOT TRUE. THERE IS A REASON
24 THAT FOR DOMESTIC VIOLENCE (INAUDIBLE) SPECIFICALLY, IT IS AN
25 OFFENSE TO POSSESS A FIREARM, AND IT IS BECAUSE OF THE NATURE

1 OF THE VIOLENCE OF A DOMESTIC VIOLENCE CONVICTION. THE
2 DEFENDANT HAS THAT CONVICTION FROM AGREEABLY 15 YEARS AGO.
3 HOWEVER, AS IS DETAILED IN THE PRE-SENTENCE REPORT, HIS
4 ULTIMATE EXECUTION OF THE SEARCH WARRANT AT HIS HOUSE CAME
5 FROM ANOTHER DOMESTIC VIOLENCE RELATED INCIDENT IN MARCH OF
6 2010.

7 SO, WHILE THE CONVICTION GOES BACK 15 YEARS, THERE
8 ARE RELATIVELY RECENT ALLEGATIONS RELATED TO VIOLENCE IN HIS
9 LIFE. WE DO NOT HAVE ANY EVIDENCE THAT HE USED THE GUNS IN
10 THOSE PARTICULAR INSTANCES. BUT THERE'S A REASON THAT THIS
11 PARTICULAR OFFENSE EXISTS. AND THAT IS BECAUSE OF THE NATURE
12 OF THE VIOLENCE THAT IS RELATED TO DOMESTIC VIOLENCE
13 CONVICTIONS.

14 AND MOVING ON IN TERMS OF HIS ATTEMPT TO PURCHASE
15 OR POSSESS A FIREARM. YOUR HONOR, IN HIS PAPERS, IT APPEARS
16 THE DEFENDANT SEEMS TO BE SAYING THAT THAT LETTER FROM THE
17 STATE OF CALIFORNIA WAS UNCLEAR AS TO WHETHER OR NOT HE COULD
18 POSSESS OR PURCHASE FIREARMS. IT'S ACTUALLY VERY CLEAR. THE
19 LETTER SAYS WE RUN RECORD CHECKS TO DETERMINE WHETHER OR NOT
20 PEOPLE CAN POSSESS OR PURCHASE FIREARMS. YOUR APPLICATION IS
21 DENIED. THIS IS THE REASON IT'S DENIED, YOUR DOMESTIC
22 VIOLENCE CONVICTION FROM 1996. THAT LETTER WENT OUT TO HIM
23 IN OCTOBER 2009. AND SIX MONTHS LATER WHEN THE SEARCH
24 WARRANT IS EXECUTED AT HIS HOUSE THOSE GUNS ARE STILL THERE.

25 I UNDERSTAND THAT HIS POSITION IS THAT HE RECEIVED

1 THOSE GUNS FROM HIS FAMILY MEMBERS, BUT THEY WEREN'T JUST
2 GUNS THAT HE HAD IN HIS HOME. THE VIDEO SHOWED THAT HE
3 ACTUALLY USED THE GUNS, AND THEY MAY HAVE BEEN FOR TARGET
4 PRACTICE OR SOME OTHER REASON, BUT THE VIDEO SHOWED AS WELL
5 THE CONTEXT BEHIND THAT TARGET PRACTICE IS NOT EXACTLY
6 COMPLETELY PLAIN AND WITHOUT SOME CONTROVERSY. SO, FOR THOSE
7 REASONS I THINK THAT HIS ATTEMPT TO MINIMIZE THIS CONVICTION
8 AND THE OFFENSE ITSELF IS SOMETHING THAT THE COURT NEEDS TO
9 ADDRESS.

10 ADMITTEDLY HE HAS MADE A LOT OF CHANGES OVER THE
11 COURSE OF TIME WHILE HE HAS BEEN OUT ON PRETRIAL RELEASE.
12 BUT HE ALSO HAD SOME NEGATIVE INTERACTIONS AND THAT'S ALL
13 THAT THE GOVERNMENT IS TRYING TO POINT OUT. BECAUSE AGAIN,
14 HE HAS ATTEMPTED TO MINIMIZE, AND SORT OF IN HIS MOTION FOR
15 BAIL PENDING APPEAL, SORT OF TRIED TO DEMONSTRATE THAT HE IS
16 A MODEL GUY ON PRETRIAL RELEASE, WHICH IS REALLY NOT THE CASE
17 AT ALL. AND SO, BEFORE YOU CAN MOVE ON, BEFORE YOU CAN GET
18 PAST THIS PART OF YOUR LIFE, YOU ALSO NEED TO BE HELD
19 ACCOUNTABLE. IT'S FOR THAT REASON WE ARE RECOMMENDING 12
20 MONTHS IN CUSTODY.

21 YOUR HONOR, I THINK IT'S ALSO RELATED TO HE TALKED
22 A LITTLE BIT ABOUT HIS LINKS TO NSM. AND REPORTEDLY AFTER
23 THE DEFENDANT'S ARREST, THESE BORDER PATROLS THAT HAD BEEN
24 EXISTING, SOME OF WHICH MAY BE DETAILED IN THE VIDEO THAT WE
25 SUBMITTED TO THE COURT, THOSE STOPPED. AND SO, AS JUST A

1 LESSON, A MESSAGE TO THE COMMUNITY, A FACTOR THAT CAN BE
2 TAKEN INTO CONSIDERATION UNDER 3553(A) AS WELL, IT WOULD NOT
3 SEND THE RIGHT MESSAGE TO HAVE SOMEONE ARRESTED FOR A VERY
4 SERIOUS OFFENSE AND THEN ESSENTIALLY LET THEM GO FREE WITH
5 FIVE YEARS PROBATION.

6 SO, JUST TO STRESS THE POINT AGAIN, HE CANNOT MOVE
7 PAST ALL OF THIS NEGATIVE STUFF IN HIS LIFE, AND ADMITTEDLY
8 THERE ARE A LOT OF PERSONAL PROBLEMS HE IS ALSO FACING, HE
9 CANNOT MOVE PAST THAT UNTIL HE IS HELD ACCOUNTABLE AND
10 ACCEPTS RESPONSIBILITY, WHICH SEEMS HE IS HAVING SOME
11 DIFFICULTY DOING. OUR RECOMMENDATION IS 12 MONTHS CUSTODY.

12 THE COURT: ALL RIGHT. THANK YOU. MR. CRAWFORD,
13 ANYTHING FROM YOUR OFFICE?

14 PROBATION OFFICER: WE HAVE NOTHING FURTHER, YOUR
15 HONOR.

16 THE COURT: SIR, WHAT DO YOU HAVE TO SAY BEFORE
17 SENTENCING?

18 THE DEFENDANT: I DO APOLOGIZE FOR ANY
19 INCONVENIENCE, AND I DO TAKE RESPONSIBILITY FOR MY ACTIONS.
20 ALL THAT NSM STUFF HAD STOPPED WAY PREVIOUS TO THAT.

21 AND UM, YOU KNOW, UM THAT SHOPLIFTING THING, I
22 WASN'T FOUND WITH ANYTHING ON ME, AND I HAD NO IDEA ANYBODY
23 WAS DOING ANYTHING. IF I HAD BEEN SHOPLIFTING, THEY WOULD
24 HAVE ARRESTED ME THEY TOLD ME.

25 YOU KNOW, I WOULD JUST LIKE YOU TO CONSIDER

1 PROBATION AND LET ME HAVE ENOUGH ROPE TO HANG MYSELF, IF I'M
2 SUCH A BAD GUY AS THE PROSECUTION SAYS. I CAN GUARANTEE YOU,
3 YOU WON'T SEE ME AGAIN.

4 AND, YOU KNOW, ALL THESE ACCUSATIONS AND STUFF CAME
5 OUT FROM A SPLIT UP FROM MY WIFE AT THE TIME, YOU KNOW, WHO
6 WAS TRYING TO GET BACK AT ME FOR A GIRLFRIEND.

7 THE COURT: TELL ME ABOUT IT.

8 THE DEFENDANT: YOU WANT ME TO TELL YOU ABOUT IT?

9 THE COURT: YEAH.

10 THE DEFENDANT: I HAD MET A GIRL -- I HAD A MET A
11 GIRL THAT I HAD KNOWN BEFORE. I RE-MET HER, SORT OF. AND WE
12 KIND OF HIT IT OFF. AND I WASN'T HAPPY IN THE PREVIOUS
13 RELATIONSHIP AT ALL. AND SO, MY WIFE AT THE TIME THOUGHT IT
14 WAS OKAY AS LONG AS MY GIRLFRIEND WAS GOING TO BE GOING AWAY.
15 WHEN SHE FIGURED OUT THAT MY GIRLFRIEND WAS GOING TO BE
16 STICKING AROUND AND I ASKED HER FOR A DIVORCE, THEN SHE
17 STARTED CALLING EVERYBODY UNDER THE SUN, YOU KNOW, EVEN TRIED
18 CALLING AGED SERVICES OR SOMETHING SAYING I WAS NEGLECTING
19 HER. SHE CALLED EVERYBODY BUT THE BOY SCOUTS TRYING TO GET
20 ME IN TROUBLE.

21 AND LIKE I SAID, I DO APOLOGIZE FOR ANY
22 INCONVENIENCE HERE. AND YOU WON'T SEE ME AGAIN UNLESS YOU
23 ACTUALLY ASK TO SEE ME. YOU WON'T SEE ME AGAIN. I CAN DO
24 PROBATION. IT WOULD HELP ME CONTINUE WITH MY JOB, AND HELP
25 ME CONTINUE WITH MY, YOU KNOW, WEEKLY DOCTORS APPOINTMENTS,

1 AND, YOU KNOW, I CAN STAY AWAY FROM EVERYTHING I'M NOT
2 SUPPOSED TO DO. THANK YOU.

3 THE COURT: ANYTHING ELSE, COUNSEL?

4 MS. HAN: YOUR HONOR, CAN I JUST RESPOND BRIEFLY TO
5 HIS DESCRIPTION OF HIS RELATIONSHIP WITH HIS SIGNIFICANT
6 OTHER, I GUESS, NOW WIFE. MY ONLY POINT I WANTED TO MAKE IS
7 TO HIGHLIGHT THE POINT WE MADE IN OUR PAPERS THAT -- I DON'T
8 KNOW IF WE GAVE ADDITIONAL INFORMATION, BUT I THINK THE
9 RELATED ISSUE TO AGE ISSUES IS I THINK THAT PARTICULAR PERSON
10 HAS SIGNIFICANT MEDICAL ISSUES, SO I THINK THAT IS WHAT THAT
11 IS ABOUT.

12 THE COURT: WHAT PERSON, EXCUSE ME?

13 MS. HAN: HIS WIFE, CHERYL CHOVAN, HAS SIGNIFICANT
14 MEDICAL ISSUES, SO I THINK THAT IS WHAT HE IS SPEAKING OF
15 THAT SEEMS TO BE A LITTLE OUT OF CONTEXT. SO, I JUST WANTED
16 TO CLARIFY THAT FOR THE COURT.

17 IN RELATION TO HIS ARREST, SHE DID RELOCATE
18 OUT-OF-STATE IN RELATION TO HIS ARREST, AFTER HIS ARREST.

19 MR. JONES: YOUR HONOR, JUST TO CLARIFY, WE DID
20 MENTION THIS IN OUR PAPERS, SO THE COURT HAS A WHOLE PICTURE.
21 MR. CHOVAN HAS INDICATED, BOTH HIS PARENTS HAVE INDICATED TO
22 ME, BASED ON THEIR CONTACT WITH MS. CHOVAN, SHE DOES HAVE
23 VERY SIGNIFICANT MENTAL HEALTH ISSUES, AS WELL AS SUBSTANCE
24 ABUSE ISSUES AND I'M SURE MEDICAL ISSUES AS WELL.

25 REGARDLESS OF THE DETAILS OF HOW WE WORK IT OUT,

1 THAT IT WAS A BAD SITUATION BETWEEN THE TWO OF THEM, AND, YOU
2 KNOW, IT'S UNLIKELY WE WILL BE ABLE TO SORT OUT ALL OF THE
3 DETAILS OF EXACTLY WHAT HAPPENED THERE. WE DO CONTEST THAT
4 MR. CHOVAN HAD ANYTHING TO DO WITH RUNNING HER OUT. IN FACT,
5 I THINK THE FACTS INDICATE THAT HIS PARENTS AND HIS
6 GIRLFRIEND CAN SUPPORT THAT HE WAS ATTEMPTING TO LEAVE. THAT
7 WAS THE SOURCE OF THE WHOLE PROBLEM HE WAS TRYING TO LEAVE
8 THE RELATIONSHIP AND SHE DIDN'T WANT THAT TO HAPPEN. I DON'T
9 WANT TO BURDEN THE COURT WITH TRYING TO COME UP WITH ALL THE
10 DETAILS. HE ACKNOWLEDGES THEY CALLED THE POLICE WITH REGARD
11 TO THE DOMESTIC VIOLENCE ISSUE, AND I DON'T THINK HE IS
12 TRYING TO MINIMIZE THE OFFENSE. BUT I DON'T THINK HE'S THE
13 PERSON THAT THE COURT NEEDS TO FEEL THE NEED TO SEND A
14 MESSAGE TO ANYBODY WITH. BECAUSE HE'S BEEN -- IT'S EXTREMELY
15 RARE, I THINK, TO HAVE A PERSON WITH A CONVICTION THIS OLD
16 THAT'S GOING TO BE CHARGED WITH THAT. I THINK THAT'S A FAIR
17 POINT FOR US TO MAKE WITHOUT MR. CHOVAN BEING ACCUSED THAT HE
18 IS NOT TAKING IT SERIOUSLY. I THINK HE HAS SHOWN BY HIS
19 ATTEMPTS TO GET BETTER WORK, HIS ATTEMPTS TO COMPLY WITH HIS
20 MENTAL HEALTH CONDITIONS AND TO GET HIS LIFE BACK IN ORDER,
21 HE IS TAKING THIS SERIOUSLY AND HIS COMMENTS TODAY FURTHER
22 SHOW THAT.

23 THE COURT: ALL RIGHT, THANK YOU. ALL RIGHT, SIR,
24 YOUR SENTENCE SHALL BE BASED UPON THE FOLLOWING: I WILL LOOK
25 TO THE GUIDELINES FIRST. UNDER THE GUIDELINES, YOUR BASE

1 OFFENSE LEVEL IS 14. THERE IS A TWO-LEVEL INCREASE FOR THE
2 NUMBER OF FIREARMS INVOLVED IN THIS CASE, FOR AN ADJUSTED
3 OFFENSE LEVEL OF 16. THE COURT GRANTS THE GOVERNMENT'S
4 MOTION FOR A MINUS THREE ADJUSTMENT FOR ACCEPTANCE OF
5 RESPONSIBILITY FOR A TOTAL OFFENSE LEVEL OF 13. YOUR
6 CRIMINAL HISTORY SCORE IS ZERO. YOUR CRIMINAL HISTORY
7 CATEGORY IS ONE. AND UNDER THE GUIDELINES, YOUR SENTENCE
8 SHOULD RANGE BETWEEN 12 AND 18 MONTHS IN CUSTODY.

9 I LOOK TO THE FACTORS PROVIDED BY LAW WHICH PERMIT
10 ME TO DETERMINE AN APPROPRIATE SENTENCE IN THIS CASE. I LOOK
11 TO YOUR PRIOR CRIMINAL HISTORY. I LOOK TO YOUR PERSONAL
12 HISTORY AND CHARACTERISTICS. I'M MINDFUL -- I'VE READ
13 EVERYTHING PRESENTED TO ME. I'M MINDFUL OF THE DETAILS OF
14 YOUR SENTENCING MEMORANDUM, AS WELL AS THOSE OF THE
15 GOVERNMENT. I'M MINDFUL OF THE NATURE OF THIS CHARGE. IT
16 HAS A UNIQUE PLACE HERE IN THAT IT INVOLVES VIOLENCE. BUT
17 I'M ALSO MINDFUL THAT YOUR CONVICTION IS APPROXIMATELY 15
18 YEARS OLD, YOUR MISDEMEANOR DOMESTIC VIOLENCE CONVICTION.
19 AND I HAVE IN MIND THE CIRCUMSTANCES THAT HAVE OCCURRED SINCE
20 AT THE SALVATION ARMY LAST SPRING.

21 WHEN I LOOK TO ALL THESE FACTORS, I HAVE READ
22 EVERYTHING, AND I'VE CONSIDERED ALL OF THIS, THE COURT IS OF
23 THE MIND IT CAN FASHION A SENTENCE THAT IS SUFFICIENT BUT NOT
24 GREATER THAN NECESSARY TO ADDRESS THIS MISCONDUCT. THE COURT
25 SENTENCES YOU TO FIVE YEARS OF PROBATION. THERE SHALL BE NO

1 FINE. YOU SHALL PAY THE \$100 SPECIAL ASSESSMENT. AND YOU
2 ARE -- THE PROBATION SHALL CONSIST OF THE STANDARD TERMS OF
3 PROBATION INCLUDING THE SPECIAL CONDITIONS.

4 THAT YOU ARE PLACED ON HOUSE ARREST FOR A PERIOD OF
5 12 MONTHS. HOUSE ARREST. AND DURING THAT PERIOD YOU ARE
6 ALLOWED TO LEAVE YOUR HOME FOR NO REASON OTHER THAN RELIGIOUS
7 ACTIVITIES, MEDICAL ACTIVITIES FOR YOURSELF. I WILL INCLUDE
8 YOUR FATHER -- YOUR STEPFATHER IN THAT REGARD.

9 THE DEFENDANT: WORK?

10 THE COURT: EMPLOYMENT, AND THAT'S IT. YOU CAN'T
11 GO TO WALMART. YOU CAN'T GO TO SEARS. YOU CAN'T GO TO TJ
12 MAX. YOU CAN'T GO SHOPPING FOR GROCERIES, ALL RIGHT, WITHOUT
13 THE PERMISSION -- ANY OTHER TIME YOU ARE OUT OF THE HOME IT
14 HAS TO BE WITH THE PERMISSION OF YOUR PROBATION OFFICER.

15 THE DEFENDANT: YES, SIR.

16 THE COURT: YOU ARE SUBJECT TO ELECTRONIC
17 MONITORING. I WILL LEAVE THE MONITORING TECHNIQUE TO THE
18 PROBATION OFFICE. IT COULD BE GPS MONITORING WITH AN ANKLE
19 BRACE, FROM AN ACTIVE SYSTEM -- WHERE DO YOU LIVE, SIR,
20 REFRESH ME.

21 THE DEFENDANT: JAMUL. IT'S OUT BY DULZURA/TECATE
22 AREA.

23 THE COURT: IN LIGHT OF THE CONVICTION, THE COURT
24 WILL DIRECT THAT THE MONITORING BE GPS ACTIVE. AND THE
25 PROBATION OFFICER MAY BROACH ME TO MODIFY THAT AS TIME GOES

1 ON, IF THE PROBATION OFFICER DETERMINES THAT IT'S
2 APPROPRIATE. THAT MEANS THE PROBATION OFFICER WILL KNOW
3 WHERE YOU ARE WITHIN 15 METERS, AT ANY TIME OF THE DAY, WITH
4 THE ANKLE BRACE AND GPS SYSTEM. IF YOU ARE NOT WHERE YOU ARE
5 SUPPOSED TO BE, YOU ARE BACK HERE AND WE HAVE OTHER OPTIONS.
6 DO YOU UNDERSTAND THAT?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: YOU MUST HAVE A PHONE LINE THAT'S
9 COMPATIBLE WITH GPS MONITORING. AND YOU ARE TO PAY THE COST
10 OF ANY TAMPERING WITH THAT -- OR ANY DESTRUCTION OF THAT GPS
11 EQUIPMENT. AND YOU SHALL PAY THE COST OF MONITORING. IF
12 IT'S GPS, IT'S \$10 A DAY, SIR? IF IT'S ACTIVE GPS?

13 PROBATION OFFICER: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. AGAIN, I WOULD LIKE FOR IT
15 TO START WITH AN ACTIVE MONITORING SYSTEM, AND THEN I WILL
16 LEAVE IT UP TO THE PROBATION OFFICER AS TO HOW TO DEAL WITH
17 THAT LATER.

18 IN ADDITION, YOU'RE NOT TO ASSOCIATE WITH OR HAVE
19 ANY PARTICIPATION WITH THE BORDER PATROL GROUP.

20 YOU'RE NOT TO ENTER OR RESIDE IN THE REPUBLIC OF
21 MEXICO WITHOUT THE PERMISSION OF YOUR PROBATION OFFICER.

22 YOU ARE TO PARTICIPATE IN A PROGRAM OF MENTAL
23 HEALTH TREATMENT AS DIRECTED BY THE PROBATION OFFICER.

24 TAKE ALL MEDICATIONS PRESCRIBED BY A PHYSICIAN OR
25 PSYCHIATRIST. AND YOU ARE NOT TO DISCONTINUE ANY MEDICATION

1 WITHOUT THE PERMISSION OF YOUR HEALTH CARE PROVIDER.

2 THE PROBATION OFFICER MAY PROVIDE INFORMATION AT HIS DISPOSAL
3 TO THE HEALTH CARE PROVIDER.

4 AND SIR, THE COURT DIRECTS THAT IF YOU HAVE ANY
5 HEALTH CARE INFORMATION, THAT WOULD BE HELPFUL TO GIVE TO THE
6 HEALTH CARE PROVIDER THAT YOU PROVIDE THAT AS WELL. DO YOU
7 UNDERSTAND THAT?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: YOU MAY BE REQUIRED TO CONTRIBUTE TO
10 THE COST OF THIS TREATMENT BASED UPON YOUR ABILITY TO PAY
11 DETERMINED BY THE PROBATION OFFICER.

12 YOU ARE TO PARTICIPATE IN A PROGRAM OF DRUG OR
13 ALCOHOL ABUSE TREATMENT, INCLUDING URINALYSIS TESTING AND
14 COUNSELING AS DIRECTED BY THE PROBATION OFFICER. AND YOU MAY
15 BE REQUIRED TO CONTRIBUTE TO THE COST OF THAT TREATMENT BASED
16 UPON YOUR ABILITY TO PAY AS DETERMINED BY THE PROBATION
17 OFFICER AS WELL.

18 MR. CRAWFORD, ANY OTHER CONDITIONS COME TO MIND?

19 PROBATION OFFICER: I'M SORRY, FOR HOW LONG DID YOU
20 SAY FOR HOME DETENTION?

21 THE COURT: 12 MONTHS.

22 MS. HAN: CAN WE ASK A POINT OF CLARIFICATION?
23 WHEN YOU SAID ASSOCIATION WITH MEMBERS OF THE BORDER PATROL,
24 DO YOU MEAN THE NSM GROUP CONDUCTING AS BORDER PATROL?

25 THE COURT: THE NSM GROUP CONDUCTING AS BORDER

1 PATROL. YES, THE NSM GROUP. THANK YOU VERY MUCH.

2 MS. HAN: AND YOUR HONOR, THE GOVERNMENT IS MOVING
3 TO DISMISS THE REMAINING COUNTS. WE ARE ASKING YOU TO ENTER
4 THE FORFEITURE ORDER AND INCLUDE THAT IN THE JUDGMENT AND
5 CONVICTION AS WELL.

6 THE COURT: ONE SECOND. THE COURT IS OF THE MIND
7 THOSE CONDITIONS -- THE SENTENCE, INCLUDING THOSE CONDITIONS,
8 ARE SUFFICIENT TO ADDRESS THE MISCONDUCT HERE, IN LIGHT OF
9 THE AGE OF THE PRIOR, AND ALL THE OTHER CIRCUMSTANCES WE HAVE
10 DISCUSSED HERE. DO YOU UNDERSTAND THERE IS A RIGHT TO
11 APPEAL?

12 MS. HAN: YOUR HONOR, ON THE VERY SPECIFIC
13 CONSTITUTIONAL ISSUES, YES.

14 THE COURT: RIGHT. YOU UNDERSTAND YOU RESERVE THE
15 RIGHT TO APPEAL ON THE SECOND AMENDMENT ISSUE, DO YOU
16 UNDERSTAND THAT?

17 THE DEFENDANT: YES, I DO.

18 THE COURT: YOU HAVE TEN DAYS FROM TODAY TO FILE
19 THAT APPEAL. MR. CRAWFORD.

20 PROBATION OFFICER: YOUR HONOR, YOU MAY HAVE
21 ALREADY SAID IT, BUT SUBMIT TO A SEARCH CONDITION.

22 THE COURT: AN ADDITIONAL CONDITION, SPECIAL
23 CONDITION OF SUPERVISED RELEASE IS THAT YOU SUBMIT TO A
24 SEARCH OF YOUR PERSON, PROPERTY, RESIDENCE, OR VEHICLE AT A
25 REASONABLE TIME AND IN A REASONABLE MANNER AS DIRECTED BY THE

1 PROBATION OFFICER, BASED UPON AN ARTICULABLE SUSPICION THAT
2 YOU ARE IN POSSESSION OF CONTRABAND OR WEAPONS. DO YOU
3 UNDERSTAND THAT, SIR?

4 THE DEFENDANT: YES.

5 THE COURT: FAILURE TO SUBMIT TO SUCH A SEARCH
6 WOULD BE A VIOLATION OF SUCH CONDITION. I WOULD ADVISE WITH
7 WHOM YOU LIVE THAT YOU ARE SUBJECT TO SUCH A SEARCH.

8 THE LAST CONDITION THAT COMES TO MIND, YOU'RE NOT
9 TO POSSESS ANY WEAPONS. IF YOU HAVE WEAPONS IN THE HOME, GET
10 RID OF THEM.

11 THE DEFENDANT: YES, SIR.

12 THE COURT: YOU'RE NOT TO BE IN THE POSSESSION OF
13 ANY WEAPONS DURING SUPERVISED RELEASE. DO YOU UNDERSTAND
14 THAT?

15 THE DEFENDANT: YES, I DO.

16 THE COURT: SIR, WOULD YOU COME FORWARD TO OBTAIN
17 THE CONDITIONS.

18 THE DEFENDANT: WHAT?

19 THE COURT: I'M TALKING TO COUNSEL. THE RECORD
20 SHALL REFLECT THE DEFENDANT HAS HIS CONDITIONS.

21 MR. JONES: YOUR HONOR, BASED ON THE SENTENCE THE
22 COURT IMPOSED, WE WITHDRAW OUR MOTION FOR BOND PENDING
23 APPEAL.

24 THE COURT: WITHDRAWN. BOND IS --

25 MR. JONES: EXONERATED?

1 THE COURT: -- EXONERATED. THANK YOU. YOUR BOND
2 IS EXONERATED, SIR. YOU ARE TO REPORT TO THE PROBATION
3 OFFICER ACROSS THE STREET BEFORE YOU LEAVE THE AREA.

4 THE DEFENDANT: YES, SIR.

5 THE COURT: ANYTHING ELSE, COUNSEL?

6 ALL COUNSEL: NO, YOUR HONOR. THANK YOU.

7 THE DEFENDANT: THANK YOU, YOUR HONOR.

8 (WHICH WERE ALL THE PROCEEDINGS
9 HELD IN THE ABOVE-ENTITLED CAUSE.)

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